

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
And Nora Mead Brownell.

Fact-Finding Investigation of Potential
Manipulation of Electric and Natural
Gas Prices

Docket No. PA02-2-000

ORDER TO SHOW CAUSE WHY MARKET-BASED RATE
AUTHORITY SHOULD NOT BE REVOKED

(Issued June 4, 2002)

Issued to:
Avista Corporation
El Paso Electric Company
Portland General Electric Company
Williams Energy Marketing & Trading Company

On February 13, 2002, the Commission directed a staff fact-finding investigation into whether any entity manipulated short-term prices in electric energy or natural gas markets in the West or otherwise exercised undue influence over wholesale prices in the West, for the period January 1, 2000, forward.¹

On May 8, 2002, in accord with the Commission's directive, Commission staff issued a data request concerning various trading strategies of sellers of wholesale electricity and/or ancillary services in the United States portion of the Western Systems Coordinating Council during 2000-2001. Among the sellers to whom the data request was sent are public utilities who were granted market-based rate authority by this Commission based on a finding that they lacked market power and that there was no evidence of affiliate abuse or reciprocal dealing. The Commission has an obligation to monitor competitive markets to ensure that market-based rates remain just and reasonable and that sellers continue to lack market power. The fact-finding investigation ordered in

¹Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 98 FERC ¶ 61,165 (2002) (February 13 Order).

this docket is critical to the Commission's ongoing obligation to ensure that public utility sellers' rates remain just and reasonable. Public utilities' cooperation with this investigation, including full and forthcoming responses to data requests are, in turn, critical to the completion of the investigation. Certain public utilities, however, are not fully cooperating with the investigation, thus hindering the Commission's ability to determine whether the Western markets have been manipulated, and, as a result, whether rates charged may have been unjust and unreasonable.

The responses to the data request of May 8, 2002, of El Paso Electric Company (El Paso), Portland General Electric Company (Portland), Avista Corporation (Avista) and Williams Energy Marketing & Trading Company (Williams) are indicative of a failure by these companies to cooperate with our investigation. The Commission is therefore issuing an order for these companies to show cause why their authority to charge market-based rates should not be revoked as a result of their failure to comply with the investigation we ordered. This order is necessary to fulfil the Commission's ongoing obligation to monitor competitive markets in order to protect electricity and natural gas customers from potentially unjust and unreasonable rates.

The Commission's staff is continuing to analyze the other responses to the May 8 data request, which number over 150. Additional orders of this nature may well be forthcoming. Any respondent that has not provided accurate and complete answers, or that does not promptly correct and/or supplement any inaccurate or incomplete submissions, will likewise face revocation of its market-based rate authority.

Background

In our February 13 Order, the Commission emphasized the need for staff to "obtain information on any and all matters relevant to potential market manipulation in the West[.]"² We further emphasized that staff proceed with this investigation with all deliberate speed.

The staff's May 8 data request asked the respondents whether they engaged in or had any knowledge of certain types of transactions in the West during 2000-2001, which had previously been identified in memoranda provided by Enron Power Marketing, Inc. (Enron or EPMI). The data request specified that each company's response was to be made under oath, in the form of an affidavit, by a responsible company official. It further admonished:

²98 FERC at 61,614.

Your company's failure to respond in a timely and complete fashion may result in an enforcement action, including the issuance of an order directing a public utility to show cause why the Commission should not revoke the public utility's authority to sell wholesale electricity and/or ancillary services at market-based rates.

Avista's Response

Avista responded to the data request on May 22, 2002. Concerning Commission staff's inquiry about ricochet type transactions during the relevant period, Avista denies that any information in its business records or from employee interviews revealed such practices or any variant thereof. However, transcripts of trading activity submitted by Portland (discussed in more detail below) reveal that Avista personnel were indeed actively involved in such transactions with Enron as well as Portland. While Avista submitted a letter it received from Portland referring generally to the transactions, it does not come forward with any kind of explanation for this discrepancy.

El Paso's Response

In its May 22, 2002, response to the staff data request, El Paso stated that it had no knowledge of any of the specified types of transactions. At the same time, El Paso submitted information that it had extensive joint dealings with Enron in the relevant market and time period. Indeed, its sworn affidavit admits that Enron personnel manned its trading desk 75% of the time during 2000-2001. While El Paso in its affidavit claims it knew nothing about EPMI's dealings on its behalf, this is simply not credible in view of the relationship described. Additionally, El Paso submitted a letter (previously made public), which boasts of \$7.3 million of revenue received by El Paso stemming from joint transactions with EPMI during June 2000 alone. However, El Paso's affidavit claims that it derived only revenue in the neighborhood of \$700,000 from Enron-related transactions. While El Paso in its affidavit claims it knew nothing about EPMI's dealings on its behalf, this is simply not credible. El Paso does not even refer to the letter in its affidavit, much less attempt to explain this discrepancy. Moreover, the Commission is aware of additional correspondence from officers of El Paso confirming this close financial relationship, which El Paso did not submit in response to the May 8 data.

Portland's Response

Portland's response to the staff's question concerning whether it had engaged in export of California power to take advantage of the price spread between the California

market and the market outside admits that such transactions did occur. However, Portland declined to identify the transactions, instead referring the Commission to a mass of previously-submitted data without further explanation. Portland's answer to whether it had participated in Enron's ricochet trading strategy was that it had discovered 17 such transactions occurring during a two-month time frame in 2000, only after its investigation in response to staff's inquiry. These transactions are described as originating as purchases by Enron from the California ISO control area, in which power was then sold to Avista, and sold in turn to Portland. Portland then resold the power back to Avista, which resold it to Enron, which then sold it back into California, for the most part to the Los Angeles Department of Water and Power control area.

Transcripts of Portland's trading activity between April and June 2000 reveal that Portland merchant and transmission personnel took an active role with Enron and other market participants in arranging exports, as well as transactions designed to further the Ricochet and Death Star trading strategies. Portland's assertion that these transactions were isolated incidents is contradicted by the transcripts, which show that such transactions were a standard and routine practice. Portland does not attempt to explain why these transactions allegedly began abruptly in April and suddenly stopped in June. Furthermore, Portland indicates that it offered a standard service it known as "Parking and Lending," which was integral to accomplishing these Enron trading strategies.

Williams' Response

In responding to staff's inquiry concerning export of California power, Williams claims that it is unable to admit or deny whether it engaged in this activity, while conceding that transactions may have been made with expectation of reselling at a higher price to buyers outside California. However, Williams does not indicate that it took any steps to ascertain the details about such transactions.

Discussion

As we described above, the Commission is aware of relevant transactions by Avista, which Avista's response to the May 8 data request makes no effort to explain. The Commission therefore finds that Avista has failed to respond fully and accurately to staff's inquiry.

The Commission also finds that El Paso's claim that it knew nothing about transactions for which we are seeking information is not credible, in view of the information we have concerning El Paso's joint financial relationship with Enron. Furthermore, the fact that El Paso failed to disclose relevant correspondence is evidence that it was less than forthcoming in its response to the staff data request.

The Commission finds that Portland's answers concerning such transactions are similarly not credible, based on the internal inconsistencies in its response discussed above. Additionally, Portland's failure to identify and explain the transactions which it admits occurred indicates a lack of cooperation to our inquiry.

Finally, the Commission finds that Williams' failure to straightforwardly answer a portion of the inquiry and to seek further details about its transactions represents an unacceptable failure to cooperate with staff's investigation.

The Commission's grant of market-based rate authority depends on a functioning competitive market for wholesale electricity and requires the full cooperation on the part of market-participants if we are to understand and rely upon that competitive marketplace to establish just and reasonable rates. The Commission has made plain that companies failing to adhere to the proper standards are subject to immediate revocation of their market-based rate authority.³ Additionally, Commission staff specifically warned that such action could be a consequence of failing to fully respond to its inquiry. In view of the foregoing, we are therefore requiring Avista, El Paso, Portland and Williams to show cause why the Commission should not revoke their market-based rate authority as of February 13, 2002, the date on which this investigation commenced.

³See *GWF Energy, LLC, et al.*, 98 FERC ¶ 61,330 at 62,390 (2001); *Kansas City Power & Light Company*, 74 FERC ¶ 61,066 at 61,175 (1996).

The Commission orders:

(A) Avista is hereby ordered, within ten days of the date of this order, to show cause why its authority to charge market-based rates should not be revoked as of February 13, 2002.

(B) El Paso is hereby ordered, within ten days of the date of this order, to show cause why its authority to charge market-based rates should not be revoked as of February 13, 2002.

(C) Portland is hereby ordered, within ten days of the date of this order, to show cause why its authority to charge market-based rates should not be revoked as of February 13, 2002.

(D) Williams is hereby ordered, within ten days of the date of this order, to show cause why its authority to charge market-based rates should not be revoked as of February 13, 2002.

(E) All respondents are hereby directed not to file their responses with the Commission, but submit a single copy of each response directly to Donald J. Gelinas, Associate Director, Office of Markets, Tariffs and Rates.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.